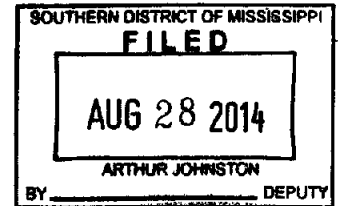


IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION



GROUP 1 AUTOMOTIVE, INC., AND  
GPI MS-N, INC. D/B/A PAT PECK NISSAN

PLAINTIFFS

VS.

CIVIL ACTION NO. 14cv334 HSO-JCG

ACE AMERICAN INSURANCE COMPANY AND  
ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC.

DEFENDANTS

**NOTICE OF REMOVAL**

TO: Fred B. Feeney, Esq.  
Nathan L. Burrow, Esq.  
Franke & Salloum, PLLC  
10071 Lorraine Road  
Gulfport, MS 39503

Ms. Gayle Parker  
Harrison County Circuit Court Clerk  
P.O. Box 998  
Gulfport, MS 39502

PLEASE TAKE NOTICE THAT PURSUANT TO 28 U.S.C. §§ 1332, 1441, and 1446, Comes Now Defendant, Arthur J. Gallagher Risk Management Services, Inc. (hereinafter "Gallagher"), and removes this action from the Circuit Court of Harrison County, Mississippi, Second Judicial District, to the United States District Court for the Southern District of Mississippi, Southern Division. This Defendant has attached to this Notice a certified copy of the entire court file in Cause Number A2402-14-123 as Exhibit "A" and requests that this Exhibit be considered a part of this Notice as if copied within this Notice in full.

In support of the Notice of Removal, this Defendant would state as follows:

1. This action was commenced by Group 1 Automotive, Inc., and GPI MS-N, Inc. d/b/a Pat Peck Nissan through their Complaint filed in the Circuit Court of Harrison County, Mississippi, Second Judicial District, on July 25, 2014. That Complaint is styled *Group 1 Automotive, Inc., and GPI MS-N, Inc. d/b/a Pat Peck Nissan v. ACE American Insurance Company and Arthur J. Gallagher Risk Management Services, Inc.*, and bears Cause Number A2402-14-123.

2. The United States District Court for the Southern District of Mississippi embraces the county where this action is now pending, and therefore is a proper venue under 28 U.S.C. §1441(a). Plaintiffs allege that they renewed a liability insurance policy issued by Defendant ACE American Insurance Company and procured by agent/broker Arthur J. Gallagher Risk Management Services for the term year 2006-2007. Plaintiffs allege the renewal of the subject policy was negligently and improperly drafted and issued to the Plaintiffs, and, without their knowledge or consent, contained more coverage provided for in the same policy during the previous two years. It is alleged that the liability insurance policy should have only provided the Plaintiffs automobile dealership with \$25,000.00 in coverage to its customers while operating vehicles still under the dealership's ownership. (The policy contained a \$1,000,000.00 deductible applied to the Plaintiffs.) Specifically, it is alleged that a customer of Plaintiffs Group I Automotive, Inc. and GPI MS-N, Inc. (Pat Peck), Nathaniel Fortson, was involved in an automobile accident on May 21, 2007 while operating one of the vehicles owned by them, and which occurred during the term of the liability insurance policy at issue in the instant cause. The accident resulted in litigation in the Circuit Court of Harrison County, Mississippi, styled *Donna Ray v. Nathaniel Fortson, et al.*, Cause No. A2402-09-00014, resulting in a judgment entered against Defendant Fortson in the amount of \$557,291.00.

3. A declaratory action was subsequently filed in the Circuit Court of Harrison County, Second Judicial District, styled *Donna Ray v. Group 1 Automotive, Inc., GPI MS-N, Inc., ACE American Insurance Company, et al.*, Cause No. A2402-2009-00210. In the declaratory action, the Court entered a judgment that the liability insurance policy issued by ACE American Insurance Company to Group I Automotive, Inc. and GPI MS-N, Inc. (Pat Peck) provided coverage to Nathaniel Fortson for the \$557,291.00 judgment arising out of the motor vehicle accident of May 21, 2007, and

was not limited to \$25,000.00. As a result of the judgment rendered against the Plaintiffs, they have asserted claims of negligence and breach of contract against ACE American Insurance Company and Arthur J. Gallagher Risk Management Services, Inc. in regard to the procurement of the subject policy. ACE American Insurance Company has not yet filed an Answer in this cause.

4. In the Complaint, Plaintiffs seek \$532,291.00 in damage from the Defendants associated with the Plaintiffs' claim that the Defendants negligently procured the insurance policy that should have only provided \$25,000.00 in coverage for the subject accident that would have been subject to the Plaintiffs' deductible.

5. This Notice of Removal is timely under 28 U.S.C. §1446(b) because it is being filed no later than thirty (30) days after service of the Complaint upon Defendants Arthur J. Gallagher Risk Management Services, Inc. and ACE American Insurance Company

6. Removal of this cause is being made pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1332. According to the Complaint, Plaintiffs are Delaware Corporations with their principal places of business in Texas and authorized to do, and are doing, business in the State of Mississippi.

7. Defendant Arthur J. Gallagher Risk Management Services, Inc. is an Illinois corporation with its principal place of business located in the State of Illinois. Defendant ACE American Insurance Company is a Pennsylvania corporation with its principal place of business in the State of Pennsylvania. The undersigned counsel represents that ACE American Insurance Company has consented to the removal of this cause and will be filing a Joinder.

8. Based on the aforementioned, there is complete diversity of citizenship between the Plaintiffs and the Defendants.

9. For reasons set forth above and because the Plaintiffs have asked for damages in an amount in excess of \$75,000.00, this action could have been originally filed in this Court pursuant to 28 U.S.C. § 1332, as this Court has diversity jurisdiction of all claims asserted by the Plaintiffs against the Defendant.

10. Nothing in this Notice shall be interpreted as a waiver or relinquishment of the Defendant's right to assert any defense or affirmative matter, including, but not limited to the following defenses: (1) lack of jurisdiction over the person; (2) insufficiency of process; (3) insufficiency of service of process; (4) failure to state a claim, or (5) any other pertinent defense under federal, state, and/or common law.

11. Pursuant to 28 U.S.C. § 1446(d), Defendant represents that promptly upon the filing of this notice, Defendant will give written notice thereof to the Plaintiffs and shall file a copy of the notice with the Clerk of the Circuit Court of Harrison County, Mississippi, Second Judicial District, wherein this action is now pending.

RESPECTFULLY SUBMITTED, this the 28<sup>th</sup> day of August, 2014.

**ARTHUR J. GALLAGHER RISK  
MANAGEMENT SERVICES, INC.,  
DEFENDANT**

BY:

  
\_\_\_\_\_  
EDWARD C. TAYLOR

**CERTIFICATE OF SERVICE**

I, Edward C. Taylor, attorney for Arthur J. Gallagher Risk Management Services, Inc., Defendant herein, hereby certify that I have this day filed the original of the above and foregoing Notice of Removal and exhibits thereto in the United States District Court for the Southern District of Mississippi, Southern Division, and that upon the filing of the original notice and exhibits thereto, I have served a true and correct copy of the said notice and exhibits on:

Fred B. Feeney, Esq.  
Nathan L. Burrow, Esq.  
Franke & Salloum, PLLC  
10071 Lorraine Road  
Gulfport, MS 39503

Ms. Gayle Parker  
Harrison County Circuit Court Clerk  
P.O. Box 998  
Gulfport, MS 39502

all to effectuate the removal of a civil action styled *Group 1 Automotive, Inc., and GPI MS-N, Inc. d/b/a Pat Peck Nissan v. ACE American Insurance Company and Arthur J. Gallagher Risk Management Services, Inc.*, Cause Number A2402-14-123 on the docket of the Circuit Court of Harrison County, Mississippi, Second Judicial District, to the United States District Court for the Southern District of Mississippi, Southern Division, pursuant to the statutes and rules in such cases made and provided.

WITNESS MY SIGNATURE hereto, this the 28<sup>th</sup> day of August, 2014.

BY: 

OF COUNSEL

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